

**COMMERCIAL LEASE**

AIMCO MICHIGAN MEADOWS HOLDINGS, L.L.C.,  
a Delaware limited liability company  
"Landlord"

and

MDV, INC.,  
an Indiana corporation  
d/b/a Zacatecas Mexican Grocery  
"Tenant"

As of April 1, 2003

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## COMMERCIAL LEASE

THIS COMMERCIAL LEASE is entered into by Landlord and Tenant as described in the following Basic lease Information on the Date which is set forth for reference only in the following Basic lease Information.

Landlord and Tenant agree:

### 1. BASIC LEASE INFORMATION.

**1.1 Terms.** In addition to the terms which are defined elsewhere in this Lease, the following defined terms are used in this Lease:

- (a) **DATE:** \_\_\_\_\_, 2003
- (b) **LANDLORD:** AIMCO Michigan Meadows Holdings, L.L.C., a Delaware limited liability company.
- (c) **TENANT:** MDV, Inc., an Indiana corporation d/b/a Zacatecas Mexican Grocery.
  - (i) Address: See Below
  - (ii) Phone: 317.481.0504 or 317.501.1884 (Mobile)
  - (iii) Fax: \_\_\_\_\_
  - (iv) Email: \_\_\_\_\_
  - (v) Tax ID #: 35-2056502-0
  - (vi) Trade Name: Zacatecas Mexican Grocery
- (d) **PREMISES:** Those premises in the Building known as Suite 3819.
- (e) **TERM:** Approximately fourteen (14) months, beginning on the Commencement Date and expiring on the Termination Date.
- (f) **COMMENCEMENT DATE:** April 1, 2003.
- (g) **TERMINATION DATE:** (i) if the Commencement Date is the first day of a calendar month, the fourteen-month anniversary of the day immediately preceding the Commencement Date; or (ii) if the Commencement Date is not the first day of a month, the fourteen-month anniversary of the last day of the month in which the Commencement Date occurs.

(h) **MINIMUM RENT:** Minimum Rent shall be payable as follows:

<u>Months</u>	<u>Monthly Rent</u>
1 – 2	\$0
3 – 14	\$625.00

(i) **PERCENTAGE RENT:** N/A. If Percentage Rent is not applicable, then Section 5 hereof and any other references to "Percentage Rent" herein shall be deemed to be deleted.

(j) **ADDITIONAL RENT (including Operating Expenses):** N/A. If Additional Rent is not applicable, then Section 4.2 hereof and any other references to "Additional Rent" herein shall be deemed to be deleted.

(k) **RENTABLE AREA OF THE PREMISES:** approximately 1504 square feet, subject to adjustment from time-to-time to reflect (i) any change in the size or use of the Premises or (ii) any correction resulting from a measurement that Landlord may cause to be made.

(l) **TENANT:** MDV, Inc., an Indiana corporation. Tenant shall also include its guests, invitees and anyone else visiting or coming to Tenant's business.

(m) **SECURITY DEPOSIT:** \$625.00.

(n) **BROKERS:** N/A.

(o) **PERMITTED USE:** Retail grocery store.

(p) **BUSINESS HOURS:** Weekdays from 8:00 a.m. to 10:00 p.m.

Saturdays from 8:00 a.m. to 10:00 p.m.

Sundays from 8:00 a.m. to 10:00 p.m.

(q) **RENT:** Minimum Rent, Percentage Rent, Additional Rent and any other amounts which Tenant is required to pay under this Lease.

(r) **BUILDING:** the land and building known as Michigan Plaza, located at 3819 Michigan Street, Indianapolis, IN 46222, and of which the Premises are a part.

(s) **PROJECT:** the mixed-use office/retail/apartment project located at 3819 Michigan Street, Indianapolis, IN 46222, together with any additions to the land or improvements hereafter made or constructed.

(t) **COMMON AREAS:** those areas defined as such in Section 10.

(u) **LANDLORD'S ADDRESS:** AIMCO Michigan Meadows  
Holdings, L.L.C.

9200 Keystone Crossing, Suite 500  
Indianapolis, IN 46260  
Attn: Nancy L. Ferrill  
Phone: 317.817.7730  
Fax: 317.706.6893  
E-mail: [Nancy.Ferrill@aimco.com](mailto:Nancy.Ferrill@aimco.com)

(v) **TENANT'S ADDRESS:**

Edelmira Valencia  
2240 Sandringham  
Indianapolis, IN 46214  
Phone: 317.481.0504

(w) **PRIME RATE:** the rate of interest from time to time announced by Bank One, N.A. (the "Bank"), or any successor to it, as its prime rate. If the Bank or any successor to it ceases to announce its prime rate, Landlord will designate a substitute financial institution for purposes of determining the Prime Rate.

(x) **GUARANTY:** all monetary obligations of Tenant are guaranteed pursuant to the Guaranty of Lease attached hereto as **Exhibit B**.

(y) **GUARANTOR(S):** Edelmira Valencia

(i) Address: 2240 Sundringham  
Indianapolis, IN 46214

(ii) Phone: 317.481.0504 or 317.501.1884 (Mobile)

(iii) Fax: \_\_\_\_\_

(iv) Email: \_\_\_\_\_

(v) Tax ID #/Social Security Number: 613-26-0950

(vi) Spouse of Guarantor: \_\_\_\_\_

(vii) Tax ID#/Social Security Number of Spouse: \_\_\_\_\_

(viii) Address of Spouse (if different than Guarantor):

(z) **LANDLORD'S WORK:** The following described items to be performed by Landlord in accordance with Section 3.2 hereof: Replacement of stained ceiling tiles in the Premises and any work necessary to ensure that all mechanical systems in the Premises are in good working condition.

(aa) **UTILITIES:** Determination of charges for utilities shall be by a separate meter installed at Tenant's expense.

(bb) **PARKING.** \_\_\_\_ Applicable ☒ Not Applicable

**Exhibits:** The following exhibits are attached to this Lease and are made parts of this Lease:

EXHIBIT A	Rules and Regulations
EXHIBIT B	Guaranty of Lease

## **2. DEMISE.**

Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, for the Term, at the rental, and upon all of the conditions set forth herein.

## **3. TERM; TENDER OF PREMISES.**

**3.1 Term.** The duration of this Lease shall be the Term. The Term will commence on the Commencement Date and expire on the Termination Date, unless earlier terminated as provided herein.

**3.2 Tender of Premises.** Tenant's occupancy of the Premises on the Commencement Date shall be deemed Tenant's acceptance thereof in its "As-Is" condition. Any and all work in connection with improvements to the Premises, if any, as set forth in Section 1.1(z) of the Lease, will be performed by Landlord ("Landlord's Work"), at Landlord's expense, unless otherwise determined by Landlord and disclosed and agreed to by Tenant; provided, however, that Landlord shall have no obligation or liability to assure that the Premises are satisfactory for Tenant and for Tenant's use. Tenant's Occupancy on the Commencement Date shall not be conditioned on any work to be performed by Landlord.

## **4. MINIMUM RENT.**

**4.1 General.** On or before the first day of each and every successive calendar month during the Term, Tenant agrees to pay to Landlord the Minimum Rent, without notice or demand, in advance, except that the first month's Minimum Rent shall be paid upon the execution hereof. Minimum Rent for any period of less than one (1) month shall be prorated based upon a 30-day month. Minimum Rent and all other Rent due hereunder shall be paid to Landlord, without deduction or offset, in lawful money of the United States of America at Landlord's Address as set forth in Section 1.1(u) or at such other place as Landlord may from time to time designate in writing.

### **4.2 [INTENTIONALLY OMITTED]**

**4.3 Free Rent Period.** Tenant's obligation to pay Minimum Rent shall be abated as to the entire Premises during the first two (2) months of the Term of this Lease, commencing as of the Commencement Date and ending on and including May 31, 2003 (the "**Free Rent Period**"). Such abatement shall apply to Minimum Rent payable under this Lease during the Free Rent Period. Minimum Rent for any calendar month in which the Free Rent Period expires shall be prorated based upon a thirty (30) day month, and all such Minimum Rent



shall be due and payable for the actual days that elapse during the remainder of the month in which the Free Rent Period. The abatement of Minimum Rent described above is expressly conditioned on Tenant's performance of all of its obligations and responsibilities under this Lease throughout the Term of this Lease (as extended); and the amount of the abated Minimum Rent is based in part on the amount of Minimum Rent due under the Lease for the initial Term. If Tenant breaches this Lease and such default results in a termination of this Lease, then Tenant shall pay to Landlord on the date of such termination, in addition to all other amounts and damages to which Landlord is entitled, the amount of Minimum Rent which would otherwise have been due and payable during the Free Rent Period (based upon the Minimum Rent due during the month immediately following the Free Rent Period).

**5. [INTENTIONALLY OMITTED]**

**6. OPERATING EXPENSES AND TAXES. N/A.**

**7. SECURITY DEPOSIT.**

Concurrently with Tenant's execution of this Lease, Tenant has deposited with Landlord the Security Deposit. The Security Deposit shall be held by Landlord as security for the timely and faithful performance by Tenant of all the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the Term. If Tenant defaults with respect to any provision of this Lease, including, but not limited to, the provisions relating to the payment of Minimum Rent, Percentage Rent, Additional Rent or any other Rent, Landlord may (but shall not be required to) use, apply or retain all or any part of the Security Deposit for payment of Minimum Rent, Percentage Rent, Additional Rent or any other Rent due, or for the payment of any amount which Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss or damage, including reasonable attorneys' fees, which Landlord may suffer by reason of Tenant's default. If any portion of the Security Deposit is so used or applied, Tenant shall, within 5 days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount, and Tenant's failure to do so shall be an "Event of Default" under this Lease. Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) within 60 days following expiration of the Term.

**8. USE.**

**8.1 General.** The Premises will be used only for the Permitted Use and for no other purpose. Tenant (or any of its respective employees, officers, servants, contractors, jobbers, licensees, invitees, guests, visitors, agents or independent contractors) will not: (i) do or permit to be done in or about the Premises, nor bring to, keep or permit to be brought or kept in the Premises, anything which is prohibited by or will in any way conflict with any law, statute, ordinance or governmental rule or regulation which is now in force or which may be enacted or promulgated after the date of this Lease; (ii) permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants (residential or

commercial) of the Building or the Project, or injure or annoy them; (iii) use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose; or (iv) cause, maintain or permit any nuisance in, on or about the Premises or commit or allow to be committed any waste in, on or about the Premises. Landlord has not promised Tenant that Tenant will have the exclusive right in the Project to the Permitted Use. For purposes of this Section 8, "Applicable Laws" shall mean all laws, statutes, ordinances, and governmental rules, regulations or requirements now in force or in force after the date of this Lease, the requirements of any board of fire underwriters or other similar body constituted on or after the date of this Lease, any direction or permanent or temporary occupancy certificate issued pursuant to any law by any public officer or officers, as well as the provisions of all recorded documents affecting the Premises. At its sole cost and expense, Tenant will promptly comply with all Applicable Laws insofar as they relate to (i) Tenant's use, occupancy or alteration of the Premises, (ii) the condition of the Premises resulting from Tenant's use, occupancy or alteration of the Premises, or (iii) alterations to the Premises required as a result of Tenant's status under Applicable Laws. Tenant will not be required to perform structural changes or changes outside the Premises required by Applicable Laws unless such requirement arises by virtue of (a) Tenant's use or occupancy of the Premises, or (b) improvements or alterations made by or for Tenant. Tenant will not (a) use or permit the use of any portion of the Premises for the conduct in or on the Premises of what is commonly known in the retail trade as an outlet store or second-hand store, or army, navy, or government surplus store; (b) advertise any distress, fire, bankruptcy, liquidation, relocation or closing or going out of business sale unless such advertisements are true, and Landlord gives its prior written consent; (c) warehouse and stock within the Premises any goods, items or merchandise other than that which Tenant intends to offer for sale in the Premises; or (d) use or permit the use in the Premises of any pinball machines, video games, or other devices or equipment for amusement or recreation, or any vending machines, pay telephone or other coin-operated devices. Landlord shall have the right, from time to time, by written notice to Tenant, to specify goods or services, or classes or categories thereof which may not be sold, rented or distributed from the Premises even if the sale, rental or distribution thereof would otherwise be within the Permitted Use; provided, however, that, if Tenant is then currently selling, renting or distributing from the Premises the goods or services, or classes or categories thereof prohibited in any such written notice, Tenant may continue selling, renting or distributing said goods or services from the Premises and such prohibition shall not apply to Tenant unless and until Tenant ceases selling, renting or distributing such goods or services from the Premises. Landlord and Tenant acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) and regulations and guidelines, as may all be amended (collectively referred to as "ADA"), establish requirements for business operations, accessibility and barrier removal, and that such requirements may or may not apply to the Premises and the building situated thereon, depending on, among other things: (1) whether Tenant's business is deemed a "public accommodation" or "commercial facility", (2) whether such requirements are "readily achievable", and (3) whether a given alteration affects a "primary function area" or triggers "path of travel" requirement. Landlord and Tenant hereby agree that Tenant shall be responsible at all times for ADA compliance within the Premises and that Landlord shall be responsible for compliance for all common space areas and that the cost of such compliance shall be paid by the party whose responsibility the area falls to.

**8.2 Operation of Tenant's Business.** Tenant's business in the Premises will be conducted only under the Trade Name, if any; Tenant will not use or permit the Premises to

be used under any other name or trade name without Landlord's prior written consent. Tenant's local advertising will refer to the business conducted at the Premises and will mention the address of the Premises. Tenant acknowledges that the identity of Tenant, the specific character of Tenant's business, the anticipated use of the Premises, and the relationship between such use and other uses within the Building have been material considerations to Landlord's entry into this Lease. Any material change in the character of Tenant's business or use will constitute an "Event of Default" under this Lease. Tenant will carry on its business diligently and continuously at the Premises through the Term of this Lease and will keep the Premises open for business in accordance with Section 8.3. Tenant hereby acknowledges that it has investigated whether its proposed use of the Premises and its proposed manner of operation will comply with all applicable laws, and Tenant assumes the risk that its proposed use of the Premises and its proposed manner of operation are, and will continue to be, in compliance with all applicable laws, including, without limitation, all zoning laws regulating the use and enjoyment of the Premises. Tenant hereby waives any defense to its obligations hereunder based upon the legal doctrines of frustration, impossibility or other defenses based on its inability to use the Premises for the purposes for which they were leased hereunder and that all rent is due notwithstanding Tenant's ability to use the Premises. Tenant acknowledges that neither Landlord or any agent of Landlord has made any representation or warranty as to the suitability of the Premises to the conduct of Tenant's business.

**8.3 Continuous Operations.** Following the Commencement Date, Tenant agrees to continuously operate its business during the Term in and from the Premises during Business Hours. Without Landlord's prior written consent, Tenant shall not operate its business from the Premises earlier or later than the hours specified by Landlord in Section 1.1(p) hereof. Nothing contained herein shall require Landlord to illuminate the Common Areas beyond the Business Hours set forth in Section 1.1(p).

**8.4 Hazardous Materials.** Tenant (or any of its respective employees, officers, servants, contractors, jobbers, licensees, invitees, guests, visitors, agents, or independent contractors) will not store, use or dispose of any Hazardous Materials (as hereinafter defined) in, on or about the Premises, the Building or the Project. Tenant will be solely responsible for and will defend, indemnify and hold Landlord, its agents and employees harmless from and against all claims, costs and liabilities, including attorneys' fees, court costs, and other expenses of litigation (i) arising out of or in connection with Tenant's (or any of its respective employees, officers, servants, contractors, jobbers, licensees, invitees, guests, visitors, agents, or independent contractors) breach of its obligations contained in this Section 8.4, or (ii) arising out of or in connection with the removal, clean-up and restoration work and materials necessary to return the Premises and any other property of whatever nature located in the Project to their condition existing prior to the appearance of Tenant's Hazardous Materials in the Premises or Project. Within ten (10) days after Landlord's request therefor and at Tenant's sole cost and expense, Tenant shall provide Landlord with any information requested by Landlord, including any third party environmental reports with respect to the Premises requested by Landlord, and/or shall allow Landlord (including its agents or contractors) reasonable access to the Premises, to ensure Tenant's compliance with this Article 8. Tenant's obligations under this Section 8.4 will survive the expiration or other termination of this Lease.

As used herein, the term "Hazardous Materials" means substances, materials or waste the generation, handling, storage, treatment or disposal of which is regulated by any local, state or federal government authority or laws, as a "hazardous waste," "hazardous material," "hazardous substance," "pollutant," or "contaminant" and including, without limitation, (a) those designated as a "hazardous substance" under Section 311 or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Secs. 1321, 1317), (b) those defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. Sec. 6903), (c) those defined as a "hazardous substance" under Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sec. 9601, as amended), (d) those defined as a "toxic" under the Toxic Substance Control Act (15 U.S.C. Sec. 2601 et. seq.), (e) those defined as a "hazardous material" by the Hazardous Transportation Act, as amended (49 U.S.C. Sec. 1801, et. seq.), and (f) any chemical or substance defined as a "toxic substances," "toxic pollutants," and "pesticides" under any applicable environmental law, including, without limitation, petroleum products and byproducts, PCBs, lead based paint, polychlorinatedbiphenyls, mold and asbestos.

**8.5 Mold.** Molds occur naturally in the environment and they can grow on virtually any organic substance, as long as moisture and oxygen are present. It is impossible to eliminate all molds and mold spores from an indoor environment. Moreover, in areas where relative humidity is high, mold can be present even if there is no other outside water coming into the building. Nonetheless, mold growth can be controlled indoors by controlling moisture.

Notwithstanding anything contained in this Lease to the contrary, Tenant agrees to use Tenant's best efforts to prevent any conditions on the Premises, such as excessive moisture, that could create an environment conducive to mold growth. In the event that such conditions develop, Tenant agrees to notify Landlord immediately of the same and further agrees to remedy such conditions. Landlord is not responsible for the consequences of any conduct of Tenant, (or any of its respective employees, officers, servants, contractors, jobbers, licensees, invitees, guests, visitors, agents or independent contractors) or other persons on the Premises with Tenant's consent that leads to or exacerbates mold growth, and Tenant shall defend, indemnify and hold harmless Landlord and Landlord's Related Parties from any loss related to such conduct. Tenant further agrees promptly to report to Landlord, in writing, any visible mold or sources of moisture infiltration that could lead to a mold problem, regardless of the cause. Failure to make a prompt written report of any such potential mold problem constitutes a breach of this Lease and an unconditional waiver and release of any and all claims for any relief, including any alleged damages, whether accrued, contingent, inchoate or otherwise, suspected or unsuspected, raised affirmatively or by way of defense or offset, related to or occurring or arising from or out of the unreported conditions.

Tenant further agrees that, in the event that Landlord provides notice to Tenant of Landlord's intention to remediate mold at the Premises, which shall be at Landlord's sole and absolute discretion, Tenant will provide immediate access to the Premises to permit Landlord to remediate any problem. In the event that Landlord determines, in its sole and absolute discretion, that Tenant should, for a period of four (4) or less days, vacate the Premises or cease its operations (in either case, a "Temporary Vacation") during such remediation, then Rent shall abate for the period of such Temporary Vacation as Tenant's sole and exclusive remedy and this Lease otherwise shall remain in full force and effect. In the event that Landlord determines, in

its sole and absolute discretion, that Tenant should, for a period of more than four (4) days, vacate the Premises or cease its operation during such remediation, then, Tenant may, as its sole and exclusive remedy within seven (7) days after such remediation commences, receive a Rent abatement during the time that Tenant has vacated the Premises or ceased operation at Landlord's direction. Tenant's refusal to vacate the Premises or cease operation in violation of this section, or other interference with Landlord's remediation activities, shall constitute a material breach of this Lease (without the benefit of any grace or cure period), and an unconditional waiver and release of any and all claims for any relief, including any alleged damages, whether accrued, contingent, inchoate or otherwise, suspected or unsuspected, raised affirmatively or by way of defense or offset, related to or occurring or arising from or out of exposure to or the presence of mold. Landlord may terminate this Lease and/or evict Tenant immediately upon Tenant's breach of any provision of this section, and Landlord may exercise any one or more of any other remedy available to Landlord under the terms of this Lease for a breach hereof or at law or in equity. Nothing herein shall release Tenant from any obligation or claims related to delinquent and/or past due Rent and/or other sums, charges or other amounts due and owing (including, without limitation, Rent and utility or other similar fees prorated to the date of such termination).

**LANDLORD SHALL NOT BE RESPONSIBLE FOR ANY DAMAGES, LIABILITIES, CLAIMS OR LOSSES INCURRED BY TENANT (OR ANY OF ITS RESPECTIVE EMPLOYEES, OFFICERS, SERVANTS, CONTRACTORS, JOBBERS, LICENSEES, INVITEES, GUESTS, VISITORS, AGENTS OR INDEPENDENT CONTRACTORS) ARISING OUT OF OR RELATING TO MOLD OR ANY OTHER FUNGUS OR AGENT, INCLUDING, BUT NOT LIMITED TO, PROPERTY DAMAGES, PERSONAL INJURY, ADVERSE HEALTH EFFECTS, LOSS OF INCOME, EMOTIONAL DISTRESS, DEATH, LOSS OF USE, OR LOSS OF VALUE AND TENANT HEREBY RELEASES LANDLORD FROM SAME. THIS MEANS THAT TENANT SHALL NOT SEEK TO HOLD LANDLORD RESPONSIBLE UNDER ANY LEGAL THEORY FOR ANY DAMAGES WHATSOEVER CAUSED BY MOLD OR ANY OTHER AGENT, EVEN IF IT RESULTS FROM A DEFECT, LATENT OR OTHERWISE, IN THE PROPERTY.**

**TENANT HEREBY ACKNOWLEDGES THAT IT HAS READ AND UNDERSTOOD THE ABOVE NOTICE AND DISCLAIMER AND AGREES TO THE PROVISIONS CONTAINED HEREIN.**

**IN THE EVENT THAT TENANT BRINGS AN ACTION AGAINST LANDLORD CONTRARY TO THE ABOVE, TENANT SHALL BE RESPONSIBLE FOR ALL LANDLORD'S REASONABLE ATTORNEY'S FEES AND COSTS, INCLUDING EXPERT'S FEES AND THAT ANY SUCH ACTION SHALL BE IN THE VENUE OF THE COUNTY WHERE THE PROPERTY IS LOCATED AND NOWHERE ELSE.**

**8.6 Disclosure.** Landlord hereby advises Tenant that there is evidence that groundwater beneath the Project may be contaminated with cis-1,2-dichloroethene (cis-1,2-DCE) and vinyl chloride. Available data shows this contamination may extend beneath the northern portion of the Building, but insufficient data exists to delineate the full extent of the plume (Michigan Meadows and Michigan Plaza will be collectively referred to as the "Properties"). The

source of this contamination is solvents that were used in degreasing and other manufacturing operations conducted immediately north of the Properties (the "Genuine Site"). Genuine Parts Company ("GPC") is the current owner of the business that conducted these operations. GPC is responsible for remediation of the Genuine Site with oversight by the State of Indiana through Indiana's Voluntary Remediation Program ("VRP"). GPC recently submitted a Phase II Investigation Report and draft Remediation Work Plan to the State of Indiana in accordance with the requirements of the VRP. The Properties have taken the following actions in the interests of its residents, commercial tenants and employees who reside or work on the Properties. First, the Properties have initiated certain testing to identify and characterize any potential hazard to the tenants and employees created by exposure to the vapors that might emanate from the solvents in the groundwater. Second, the Properties have requested that the State of Indiana Department of Environmental Management help develop appropriate testing and monitoring and meet with residents at the Properties to provide background and current information on the situation. Third, the Properties have demanded that GPC acknowledge its responsibility for remediation, and to commence such remediation without delay. The Properties are committed to ensuring that all residents, tenants and employees are provided with safe working and living spaces and that the responsible parties address any hazards immediately.

## **9. UTILITIES.**

Tenant covenants and agrees to pay all charges for water, sewage disposal, gas, electricity, light, heat, air-conditioning, power, telephone or other utility services used or consumed in, or supplied to, the Premises. Should Landlord elect to supply any of such utility services to the Premises, Tenant shall purchase and pay for the same in accordance with Section 6. The determination of charges for any such utility shall be as specified in Section 1.1(aa) hereof. Notwithstanding the foregoing, Landlord, at its option and at any time during the Term, may install, at Tenant's expense, a separate meter with respect to the determination of utility charges pertaining to the Premises. Landlord shall incur no liability to Tenant in the event that any utility becomes unavailable from any source of supply or for any reason not within Landlord's reasonable control. All utilities required by Tenant and not provided by Landlord, as set forth above, shall be contracted for by Tenant in Tenant's own name with the appropriate utility supplier. In such event, Tenant shall pay for all such utilities from time to time as invoiced by the suppliers of such utilities.

## **10. COMMON AREAS.**

### **10.1 Definitions.** The following defined terms are used herein:

(a) **Building Common Areas:** all areas and facilities in and around the Building which are provided and designated from time to time by Landlord for the general non-exclusive use and convenience of Tenant with other commercial tenants of the Building and their respective employees, invitees, licensees or other visitors, including, without limitation, certain hallways, entry ways, stairs, elevators, driveways, walkways, terraces, docks, loading areas and trash facilities in and around the Building.

(b) **Project Common Areas:** all areas and facilities located in the Project which are provided and designated from time to time by Landlord for the general and

non-exclusive use and convenience of Tenant, with Landlord and other commercial tenants of the Project and their respective employees, invitees, customers, licensees and other visitors, including without limitation certain driveways, walkways, parking areas, terraces, docks, tunnels, loading areas and trash facilities.

(c) **Common Areas:** The Building Common Areas and the Project Common Areas.

**10.2 Right of Use.** Landlord grants Tenant, its employees, invitees, licensees and other visitors a non-exclusive license for the Term to use the Common Areas, subject to the terms and conditions of this Lease. Without advance notice to Tenant (except with respect to matters covered by Section 10.2(a) below) and without any liability to Tenant in any respect, Landlord will have the right to:

(a) establish and enforce reasonable rules and regulations concerning the maintenance, management, use and operation of the Common Areas (a copy of the current rules and regulations is attached to this Lease);

(b) close off any of the Common Areas to whatever extent required in the opinion of Landlord and its counsel to prevent a dedication of any of the Common Areas or the accrual of any rights by any person or the public to the Common Areas, provided such closure does not deprive Tenant of the substantial benefit and enjoyment of the Premises;

(c) temporarily close any of the Common Areas for maintenance, alteration or improvement purposes; and

(d) change the size, use, shape or nature of any such Common Areas, or change the arrangement or location of, or both, or regulate or eliminate the use of any concourse, or any elevators, stairs, toilets or other public conveniences in the Common Areas, provided such changes do not materially adversely affect Tenant's beneficial use of the Premises.

### **10.3 [INTENTIONALLY OMITTED]**

## **11. LANDLORD'S SERVICES.**

**11.1 Landlord's Repair and Maintenance.** Landlord will maintain, repair and restore, as an Operating Expense, the Common Areas, including lobbies, stairs, walkways, driveways and rest rooms, if any; the mechanical, plumbing and electrical equipment serving the Building (excluding any such equipment exclusively serving the Premises); and the structure of the Building, in reasonably good order and condition; provided, however that such obligations shall be subject to the provisions of Sections 27 and 28 hereof.

**11.2 Landlord's Services.** Landlord will keep the Common Areas in clean and orderly condition, consistent with comparable properties in the area where the Project is located, free of debris and properly lighted and landscaped. Landlord will also provide heating, ventilation and air-conditioning (as required by the seasons) to the interior Common Areas, if any, sufficient for their normal use. Landlord will not be in default under this Lease or be liable for any damages directly or indirectly resulting from, nor will the Rent be abated by reason of

(a) the installation, use or interruption of use of any equipment in connection with the furnishing of any of such services, (b) the failure to furnish, or delay in furnishing, any such services when such failure or delay is caused by accident or any condition beyond the reasonable control of Landlord or by the making of necessary repairs or improvements to the Premises, Building or Common Areas, or (c) any limitation, rationing or restrictions on use of water, electricity, gas or any other form of energy serving the Premises, Building or Common Areas.

**11.3 Limitation on Liability.** Landlord will not be liable to Tenant or any other person, for direct or consequential damage, or otherwise, for any failure to supply any heat, air conditioning, elevator, cleaning, lighting, or other service which Landlord has agreed to supply during any period. Landlord shall not be responsible for any electrical current surges. Landlord reserves the right temporarily to discontinue such utilities and services, or any of them, at such times as may be necessary by reason of accident, repairs, alterations or improvements, strikes, lockouts, riots, acts of God, governmental preemption in connection with a national or local emergency, any law, rule, order or regulation of any governmental agency, conditions of supply and demand which make any product unavailable, Landlord's compliance with any mandatory governmental energy conservation or environmental protection program, or any voluntary governmental energy conservation program at the request of or with consent or acquiescence of Tenant, or any other happening beyond the control of Landlord. Landlord will not be liable to Tenant or any other person or entity for direct or consequential damages resulting from the admission to or exclusion from the Building or Common Areas of any person. Landlord will not be liable for damages for injury to persons or property or interruption of business for any discontinuance permitted under this Section 11, nor will such discontinuance in any way be construed as an eviction of Tenant, cause an abatement of Rent, or operate to release Tenant from any of Tenant's obligations under this Lease or create any right of setoff. Anything in this Lease to the contrary notwithstanding, Tenant agrees that it shall look solely to the estate and property of Landlord in the land and buildings comprising the Project, and subject to prior rights of any mortgagee of the Project or any part thereof, for the collection of any judgment (or any judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms, covenants, and conditions of this Lease to be observed and/or performed by Landlord, and no other assets of Landlord shall be subject to levy, execution, or other procedures for the satisfaction of Tenant's remedies

## **12. TENANT'S CARE OF THE PREMISES.**

Except for those items expressly required to be maintained and repaired by Landlord pursuant to Section 11, Tenant will maintain and repair all of the Premises (including, without limitation, Tenant's equipment, personal property and trade fixtures located in the Premises, all mechanical, plumbing and electrical equipment exclusively serving the Premises, the storefront of the Premises, and all glass surfaces within the Premises), in good working order and in good, clean and sanitary condition, reasonable wear and tear excluded. Tenant will immediately advise Landlord of any damage to the Premises, the Building or the Common Areas. At Landlord's option, all damage or injury to the Premises, the Building or the Common Areas, or the fixtures, appurtenances and equipment in the Premises, Building or Common Areas which is caused by Tenant, (or any of its respective employees, officers, servants, contractors, jobbers, licensees, invitees, guests, visitors, agents or independent contractors) may be repaired, restored or replaced by Landlord, at the expense of Tenant, and such expense, including an



amount sufficient to reimburse Landlord for overhead and related expenses, will be collectible as Rent and will be paid by Tenant within ten (10) days after delivery of a statement for such expense.

### **13. ALTERATIONS.**

Tenant shall not make or allow to be made any alteration, addition or improvement (an "Alteration") to or of the Premises or any part thereof without first obtaining the written consent of Landlord. Landlord's consent to any such Alteration or Landlord's approval of any plans or specifications therefor will not create any responsibility or liability on the part of Landlord for the completeness, design sufficiency or compliance with any applicable laws, rules or regulations of governmental agencies or authorities of such Alteration, plans or specifications. In the event Landlord consents to the making of any Alteration to the Premises by Tenant, such Alteration shall be made by Tenant at Tenant's sole cost and expense. Landlord may impose, as a condition to granting such approval, such requirements as Landlord, in its sole discretion, may deem desirable, including, without limitation, requiring that plans and specifications be submitted for Landlord's approval, that payment and performance bonds be posted, and that construction be accomplished during a specified time period. All Alterations shall be done in accordance with all applicable laws, regulations, ordinances, rules, or other requirements of all governmental or other authorities. Any Alterations to or of the Premises, including, but not limited to, wall coverings, paneling, built-in cabinet work and workstations, but excluding movable furniture and trade fixtures, shall at once become a part of the Premises and Landlord's property and shall be surrendered with the Premises. Notwithstanding the foregoing, upon the expiration or sooner termination of the Term, Tenant shall, upon written demand by Landlord, at Tenant's sole cost and expense, forth-with and with all due diligence, remove any Alterations made by Tenant and designated by Landlord to be removed, repair any damage to the Premises caused by such removal, and restore the Premises to their condition at the commencement of this Lease, ordinary wear and tear excluded.

### **14. LIENS.**

Tenant shall keep the Premises, Building, and Project free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant. Tenant shall require all parties performing work or services at the Premises to execute a waiver of mechanic's liens that provides that said party agrees that no mechanics' lien or claims will be entered and filed against the Premises or buildings or any part thereof, or the curtilage appurtenant thereto, either by said party or anyone else for any work, labor and materials supplied in the performance of said work or services, or under any supplemental work or services at the Premises. Tenant will indemnify Landlord against, and hold Landlord, the Premises harmless of and from, all mechanics' liens and claims of liens, and all other liabilities, liens, claims, and demands, on account of such work. If any such lien, at any time, is filed against the Premises or any part of the Premises, Tenant will cause such lien to be discharged of record within ten (10) days after the filing of such lien, except that if Tenant is diligently contesting such lien, it will furnish Landlord, within such ten (10) day period, security reasonably satisfactory to Landlord of at least one hundred fifty percent (150%) of the amount of the claim, plus estimated costs and interest. If a final judgment establishing the validity or existence of a lien for any amount is entered, Tenant will pay and satisfy the same at once. If Tenant fails to

pay any charge for which a mechanics' lien has been filed, and has not given Landlord security as described above, Landlord may, at its option, pay such charge and related costs and interest, and the amount so paid, together with reasonable attorneys' fees incurred in connection with such lien, will be immediately due from Tenant to Landlord. Landlord may require, at Landlord's sole option, that Tenant provide to Landlord, at Tenant's sole cost and expense, a performance and payment bond in an amount equal to 1½ times the estimated cost of any Alteration to the Premises which Tenant desires to make, to insure Landlord against any liability for mechanic's and materialmen's liens and to insure completion of the work. Landlord reserves the right to enter the Premises for the purpose of posting such notices of non-responsibility as may be permitted by law, or desired by Landlord.

#### **15. END OF TERM.**

At the end of the Term, Tenant will promptly quit and surrender the Premises broom-clean, in good order and repair, ordinary wear and tear excepted. If Tenant is not then in default, Tenant may remove from the Premises any trade fixtures, equipment and movable furniture placed in the Premises by Tenant, whether or not such trade fixtures or equipment are fastened to the Building; provided, however, that Tenant will not remove any trade fixtures or equipment without Landlord's prior written consent if such fixtures or equipment are used in the operation of the Building, or if the removal of such fixtures or equipment will result in impairing the structural strength of the Building. Whether or not Tenant is in default, Tenant will remove any Alterations as Landlord has requested in accordance with Section 13. Tenant will fully repair any damage occasioned by the removal of any trade fixtures, equipment, furniture or Alterations. All trade fixtures, equipment, furniture, inventory, effects and Alterations on the Premises after the end of the Term will be deemed conclusively to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without notice to Tenant or any other person and without obligation to account for them, and Tenant will reimburse Landlord for all expenses incurred in connection with such property, including without limitation the cost of repairing any damage to the Building or Premises caused by the removal of such property. Tenant's obligation to observe and perform this covenant will survive the expiration or other termination of this Lease.

#### **16. ASSIGNMENT AND SUBLETTING.**

**16.1 General.** Tenant shall not, either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, and shall not sublet the Premises, or any part thereof, or any right or privilege appurtenant thereto, or allow any other person (the employees, agents, servants and invitees of Tenant excepted) to occupy or use the Premises, or any portion thereof, without first obtaining the written consent of Landlord which may be withheld in Landlord's sole and absolute discretion. A consent to one assignment, subletting, occupation or use by any person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Consent to any such assignment or subletting shall in no way relieve Tenant of any liability under this Lease. Any such assignment or subletting without Landlord's consent shall be void, and shall, at the option of the Landlord, constitute an "Event of Default" under the terms of this Lease. Notwithstanding anything to the contrary, Tenant agrees not to enter into any agreement to assign, lease or sublease any portion of the Premises to any tenant or other occupant of any

portion of the Project or to anyone with whom the Landlord is in contact regarding a proposed or potential tenancy in the Building or the Project. Any attempt by Tenant to so assign, lease or sublease any portion of the Premises to any tenant or other occupant of the Project or to anyone with whom the Landlord is in contact regarding a proposed or potential tenancy in the Building or the Project shall be void and of no force or effect and shall constitute an Event of Default under the terms of this Lease. Further, Tenant agrees not to make any representation in connection with a proposed assignment or subletting, whether oral or written, regarding Landlord's rights or obligations or with respect to what understanding or agreement Landlord would be willing to enter into. Additionally, anything contained in this Article 16 to the contrary notwithstanding, in the case of a proposed subletting, the rental rate shall be no less than the greater of (i) the fair rental value for a comparable space for a comparable term in the Building or the Project or (ii) the Minimum Rent and Additional Rent provided for under this Lease on a square foot basis.

**16.2 Rights of Landlord.** If Tenant's interest in this Lease is assigned, whether or not in violation of the provisions of this Lease, Landlord may collect all rent paid by the assignee; if the Premises or any part thereof are sublet to, or occupied by, or used by, any person other than Tenant, whether or not in violation of this Lease, Landlord, after default by Tenant under this Lease, may collect all rent paid by the subtenant, user or occupant. In either case, Landlord shall apply the net amount collected to the Rent reserved in this Lease, but neither any such assignment, subletting, occupancy, nor use, nor any such collection or application, shall be deemed a waiver of any term, covenant or condition of this Lease or the acceptance by Landlord of such assignee, subtenant, occupant or user as a tenant. Tenant agrees to pay to Landlord any reasonable attorneys' fees and other expenses incurred by Landlord in connection with any proposed assignment of Tenant's interest in this Lease or any proposed subletting of the Premises or any part thereof.

**16.3 Submission by Tenant.** Subject to the limitations set forth in Section 16.1 above, if Tenant should desire to assign this Lease or to sublet the Premises, Tenant shall submit to Landlord a written request for Landlord's consent to such assignment or subletting, which request shall contain or be accompanied by the following information: (i) the name and address of the proposed assignee or subtenant; (ii) the terms and conditions of the proposed assignment or subletting, which terms and conditions shall include, without limitation, in the case of a proposed subletting, a rental rate of no less than the greater of (A) the fair rental value for a comparable space for a comparable term in the Building or the Project or (B) the Minimum Rent and Additional Rent provided for under this Lease on a square foot basis; (iii) the nature and character of the business of the proposed assignee or subtenant and its proposed use of the Premises; and (iv) banking, financial and other credit information with respect to the proposed assignee or subtenant (plus such additional financial and credit information as Landlord may reasonably request within fifteen (15) days after receipt of Tenant's request), reasonably sufficient to enable Landlord to determine the financial responsibility of the proposed assignee or subtenant. Landlord shall then have the following options, to be exercised by notice ("Landlord's Notice") given to Tenant within thirty (30) days after receipt of Tenant's request for consent (or thirty (30) days after receipt of additional financial and credit information requested by Landlord, whichever is later):

(a) Landlord may require Tenant to surrender the Premises to Landlord and to accept a termination of this Lease as of a date to be designated by Landlord in the Landlord's Notice, which date shall not be less than sixty (60) days nor more than one hundred twenty (120) days following the date of Landlord's Notice, and this Lease shall expire on such date as if that date had been originally fixed as the Termination Date;

(b) Landlord may elect to consider Tenant's request provided that no Event of Default is in existence and provided that the following conditions are satisfied in Landlord's reasonable discretion:

(1) The subletting or assignment shall be, in Landlord's sole and absolute discretion, to a Tenant whose occupancy will not be more objectionable or more hazardous than that of Tenant herein or impose any additional burden upon Landlord in the operation of the Building;

(2) Tenant shall not receive any money from the assignee or sublessee, whether in the form of monthly rentals, key money, fixture fees or otherwise, in excess of the Rent being paid to Landlord under this Lease. If any such money is paid to Tenant, Tenant shall promptly report same and pay over such amount to Landlord;

(3) The proposed sublessee or assignee shall be a reputable party whose financial net worth and financial responsibility is, considering the obligations undertaken, reasonably satisfactory to Landlord;

(4) The subletting or assignment shall be expressly subject to all of the obligations of Tenant under this Lease and the further condition that the Lease and Premises shall not be further assigned, encumbered, transferred or subleased, in whole or in part, or any part thereof used or occupied by others, without the prior written consent of Landlord in each instance.

**16.4 Effectiveness of Assignment or Sublease.** No permitted or consented to assignment or subletting shall be effective or valid for any purpose whatsoever unless and until a counterpart or copy of the assignment or sublease shall have been first delivered to Landlord, and, in the event of an assignment, until Tenant has delivered to Landlord a written agreement executed and acknowledged by the Tenant and such assignee wherein such assignee assumes jointly and severally with Tenant the due performance of Tenant's obligations under this Lease to the Termination Date, notwithstanding any other or further assignment. In the event that Landlord shall consent to an assignment or sublease under the provisions of Section 16 hereof, Tenant shall pay Landlord's reasonable processing costs and attorney's fees incurred in giving such consent.

**16.5 Certain Transfers.** Any transfer by operation of law or otherwise, of (i) Tenant's interest in this Lease, (ii) a fifty (50%) percent or greater equity, capital, profits or voting interest in Tenant (whether stock, partnership interest or otherwise, and aggregating the current transfer with previous transfers), or (iii) practical control of Tenant and its affairs shall be deemed an assignment of this Lease for purposes of this Section 16.

## **17. SIGNS.**

The design, size, location and manner of installation of all signs in, on or about the Building and Project shall be within Landlord's exclusive control and shall comply with all applicable laws and historical requirements, if any. Without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed if Tenant has complied with all other requirements specified herein, Tenant will not place or permit to be placed (i) any sign, advertising material, or lettering upon the exterior of the Premises, or (ii) any sign, advertising material, or lettering upon the exterior or interior surface of any door or show window or at any point inside the Premises from which it may be visible from outside the Premises. Upon request of Landlord, Tenant will immediately remove any unauthorized sign, advertising material or lettering at Tenant's expense. If Landlord consents to any signs, such signs shall be installed and maintained at Tenant's expense and in compliance with all applicable laws, ordinances and required approvals of applicable governmental authorities. At Landlord's option, all signs in or for the Premises shall be provided by Landlord at Tenant's expense.

## **18. TENANT ADVERTISING.**

Tenant shall not use, and shall cause each of its Affiliates, agents or brokers not to use, the name or likeness of the Building or the Project in any advertising without Landlord's consent. "Affiliate" means, as to any designated person or entity, any person or entity which controls, is controlled by, or is under common control with, such designated person or entity.

## **19. HOLD HARMLESS; NON-LIABILITY OF LANDLORD.**

Subject to Section 20.5, Tenant shall indemnify, defend and hold Landlord and Landlord's officers, directors, members, managers, partners, affiliates, employees, agents and representatives (collectively "Landlord's Indemnified Parties") harmless against and from any and all claims, demands, liabilities, actions and damages and all costs and expenses related thereto (including attorneys' fees, court costs, and other expenses of litigation), and all damages and liabilities of any kind or nature whatsoever for or attributable to (i) the injury, death, disability or illness of any person or persons, or damage to any property occurring in, on or about the Premises or arising from Tenant's (or any of its respective employees, officers, servants, contractors, jobbers, licensees, invitees, guests, visitors, agents or independent contractors) use of the Premises, from the conduct of its business or from any activity, work, or other things done, permitted or suffered by Tenant (or any of its respective employees, officers, servants, contractors, jobbers, licensees, invitees, guests, visitors, agents or independent contractors) in or about the Premises; or (ii) any breach or default in the performance of any of Tenant's obligations under this Lease, or arising from any act or negligence of Tenant (or any of its respective employees, officers, servants, contractors, jobbers, licensees, invitees, guests, visitors, agents or independent contractors). Landlord shall not be responsible for, and Tenant hereby indemnifies, defends and holds Landlord harmless from any liability in connection with, the loss, theft, misappropriation or other disappearance of furniture, furnishings, fixtures of personal property from the Premises or other parts of the Building regardless of whether the Premises or Building are locked at the time of such loss unless the loss arises from Landlord's willful acts or omissions or its gross negligence. In any such action or proceeding against Landlord's Indemnified Parties by reason of any claim for which Tenant has indemnified any of Landlord's

Indemnified Parties hereunder, if Landlord elects, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. Landlord's Indemnified Parties shall not be liable for any loss or damage to persons or property in the Project resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Building or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other place or resulting from dampness, or any such injury or damage from any other cause whatsoever, unless caused by or due to the negligence of Landlord or its employees. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises, from any cause other than Landlord's negligence; Tenant hereby waives and releases all claims in respect thereof against Landlord. Tenant shall give prompt notice to Landlord in case of casualty or accidents in the Premises. Landlord's Indemnified Parties shall not be liable for interference with light or air or for any latent defect in the Premises. Landlord shall have no obligation to provide security guards, patrols, devices or systems for the Premises, Building or Project, and shall not be liable for any failure to provide such security services.

**19.1 Security.** Landlord shall have no obligation to provide any type of security for the Premises and/or Project, including but not limited to security guards, patrols, devices or systems for the Premises, Building or Project, and shall not be liable for any failure to provide such security services. In the event Landlord does provide any such security guards, patrols, devices or systems for the Premises, Building or Project, doing so shall not constitute a waiver of this provision.

## **20. TENANT'S INSURANCE OBLIGATIONS.**

The following requirements (collectively, the "Insurance Requirements") shall be complied with by Tenant at all times during the Term:

**20.1 Insurance to be Maintained by Tenant.** At all times during the Term, Tenant shall maintain, at Tenant's expense, the following insurance coverage:

(a) "All Risk" or "Special Causes of Loss" property insurance covering all physical loss to the Alterations and Tenant's Property in the Premises for their full replacement cost;

(b) Business interruption insurance and extra expense coverage covering risk of loss of income and charges and costs incurred due to (1) the occurrence of any of the hazards covered by the insurance to be maintained by Tenant described in Section 20.1(a) above, and/or (2) prevention of, or denial of use of or access to, all or part of the Premises or the Building, with coverage in a face amount of not less than the aggregate amount, for a period of twelve (12) months following the insured-against peril, of the loss of income, charges and costs contemplated under the Lease and in all events shall be carried in amounts necessary to avoid any coinsurance penalty that could apply;

(c) Commercial general liability insurance (including protective liability coverage on operations of independent contractors engaged in construction and blanket contractual liability insurance), written on a per occurrence basis with an aggregate limit of not

less than \$2,000,000, a per-occurrence limit of not less than \$2,000,000 and with other limits reasonably satisfactory to Landlord; any general aggregate shall apply on a per location basis;

(d) Business auto liability insurance which insures against bodily injury and property damage claims arising out of the ownership, maintenance, or use of "any auto." A minimum of a combined single limit of \$1,000,000 per accident shall apply;

(e) Workers compensation insurance and employer's liability insurance. Worker's compensation in statutory limits, and state disability insurance as required by applicable law, covering all employees. Employer's liability insurance shall afford limits not less than \$500,000 for bodily injury by accident, \$500,000 for each employee for bodily injury by disease, and a \$500,000 policy limit for bodily injury by disease; and

(f) Such other coverage as Landlord or any mortgagee of Landlord may require with respect to the Premises, its use and occupancy and the conduct or operation of business therein.

Landlord may, from time to time, but not more frequently than once every year, adjust the minimum limits set forth above.

**20.2 Insurer and Policy Requirements.** All insurance policies to be maintained under Section 20.1(a) shall be issued by companies of recognized responsibility, licensed to do business in the State in which the property is located, reasonably acceptable to Landlord, and maintaining a rating of A-/XII or better in Best's Insurance Reports-Property-Casualty (or an equivalent rating in any successor index adopted by Best's or its successor), (b) shall provide that they may not be canceled or modified unless Landlord and all additional insureds and loss payees thereunder are given at least thirty (30) days' prior written notice of such cancellation or modification, (c) liability policies (except employer's liability) shall name, as additional insureds, Landlord, Apartment Investment & Management Company, and the property manager for the Project, and any mortgagee of Landlord whose name and address shall have been furnished to Tenant and (d) all liability insurance required to be maintained by Tenant shall be primary and non-contributory in all respects. All policies providing property insurance coverage pursuant to Section 20.1 above shall name, as loss payees, Landlord, each mortgagee of Landlord described above and Tenant, as their interests may appear. Any deductibles selected by Tenant shall be sole responsibility of Tenant.

**20.3 Evidence of Coverage; Renewals.** Prior to the Commencement Date or, in the case of insurance required during the performance of Alterations, prior to the commencement of the Alterations, Tenant shall deliver to Landlord certificates of insurance for the insurance coverage required by Section 20.1 and, if required by Landlord, copies of the policies therefor, in each case, in form and providing for deductibles reasonably satisfactory to Landlord. Tenant shall procure and pay for renewals of such insurance from time to time before the expiration thereof, and Tenant shall deliver to Landlord certificates of renewal at least thirty (30) days before the expiration of any existing policy. If Tenant fails to procure or maintain any insurance required by this Lease or fails to pay all premiums and charges therefor, Landlord may (but shall not be obligated to) pay the same, and Tenant shall reimburse Landlord, within twenty (20) days after demand, for all such sums paid by Landlord.

**20.4 Additional Insurance, Blanket Insurance.** Tenant shall not carry separate or additional insurance, concurrent in form or contributing in the event of any loss or damage with any insurance required to be obtained by Tenant under this Lease unless the parties required by Section 20.2 to be named as additional insureds or loss payees thereunder are so named. Tenant may carry any insurance coverage required of it hereunder pursuant to blanket policies of insurance so long as the coverage afforded Landlord and the other additional insureds or loss payees, as the case may be, thereunder shall not be less than the coverage that would be provided by direct policies.

**20.5 Waivers of Claims.** Landlord and Tenant hereby waive any and all rights to recover against the other and against other tenants or occupants of the Building and Project, and against their respective officers, directors, stockholders, partners, members, managers, affiliates, employees, agents, representatives, customers or business visitors, for damage to such waiving party or loss of its property or the property of others under its control arising from any cause covered by any property insurance required to be carried by such waiving party hereunder or actually carried by such waiving party, to the extent of the limits of such property insurance. In the event the foregoing waiver is available but at an additional premium, the party benefiting therefrom shall have the right to pay the additional premium for such waiver.

## **21. LANDLORD'S LIEN.**

In addition to any statutory landlord's lien and in order to secure payment of all Minimum Rent, Percentage Rent, Additional Rent and other Rent due under this Lease, and to secure payment of any damages or loss which Landlord may suffer by reason of the breach by Tenant of any covenant, agreement or condition contained in this Lease, Tenant hereby grants to Landlord a security interest in and an express contractual lien upon all goods, inventory, equipment, fixtures, furniture, improvements and other personal property of Tenant presently or hereafter situated on the Premises and all proceeds therefrom. Tenant's personal property may not be removed from the Premises, except in the ordinary course of business, without Landlord's prior written consent if any Event of Default (defined in Section 25.1) is in existence. Upon the occurrence of an Event of Default, in addition to any other available remedies, Landlord shall have all the rights of a secured party under the Uniform Commercial Code with respect to the property covered by the security interest herein granted. Upon request by Landlord, Tenant agrees to execute and deliver to Landlord such financing statements as may be required to perfect the security interest of Landlord granted herein. Tenant hereby appoints Landlord as its true and lawful attorney-in-fact for purposes of executing any financing statement or other instrument necessary to perfect Landlord's security interest, and Landlord is authorized to execute such financing statement or instrument upon Tenant's failure to do so.

## **22. RULES AND REGULATIONS; COMPLIANCE WITH LAWS.**

**22.1** Tenant shall faithfully observe and comply with the rules and regulations that Landlord shall from time to time promulgate and/or modify. Landlord may amend, delete, and make such other rules and regulations concerning the Building and Project as Landlord deems reasonably necessary, which rules and regulations shall be binding upon Tenant upon delivery of a notice thereof to Tenant. The rules and regulations in effect on the date of this Lease are attached hereto as Exhibit A and made a part of this Lease. Landlord shall not be



responsible to Tenant for the non-performance of any of the rules and regulations by any other tenants or occupants of the Building or Project.

**22.2** Tenant, at Tenant's expense, shall comply with, and Tenant shall cause its respective employees, officers, servants, contractors, jobbers, licensees, invitees, guests, visitors, agents or independent contractors to comply with (a) all laws, ordinances, orders, rules, regulations and other requirements of governmental authority which impose any duty with respect to or otherwise relate to the use, condition, occupancy, maintenance or alteration of the Premises, whether now in force or hereafter enacted, and (b) all recorded covenants, rules and restrictions to which the Building is subject from time to time.

### **23. HOLDING OVER.**

If Tenant shall hold over after the expiration of the Term or of Tenant's right of possession, without written agreement providing otherwise, Tenant shall be deemed to be a tenant from month to month, at a monthly Minimum Rent, payable in advance, equal to one hundred fifty percent (150%) of the Minimum Rent which would have been applicable had the Term continued through the period of such holding over, multiplied by the monthly Minimum Rent payable during the last year of the Term, and monthly Percentage Rent, and Additional Rent also payable in advance. Tenant shall be bound by all of the other terms, covenants and agreements of this Lease as the same may apply to a month-to-month tenancy. Nothing contained herein shall be construed to give Tenant the right to hold over at any time, and Landlord may exercise any and all remedies at law or in equity to recover possession of the Premises, as well as any damages incurred by Landlord, due to Tenant's failure to vacate the Premises and deliver possession to Landlord as herein provided.

### **24. ENTRY BY LANDLORD.**

Landlord reserves, and shall at any and all times have, the right to enter the Premises to inspect the same, to show the Premises to prospective purchasers or tenants, to post notices of non-responsibility, and to repair the Premises or any portion of the Building as Landlord may deem necessary or desirable, all without abatement of Rent, and Landlord may for such purposes erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, provided that the entrance to the Premises shall not be unreasonably blocked thereby, and further provided that the business of Tenant shall not be interfered with unreasonably. Tenant hereby waives and releases any claim against Landlord's Indemnified Parties for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby, arising out of Landlord's actions in accordance with this Section 24. Landlord shall have the right to use any and all means which Landlord may deem proper to open any doors in an emergency in order to obtain entry to the Premises, without liability to Tenant except for any failure to exercise due care for Tenant's property. Any entry to the Premises obtained by Landlord in accordance with this Section 24 shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof.

## **25. DEFAULT AND REMEDIES.**

**25.1 Events of Default.** Each of the following shall constitute an "Event of Default" under this Lease:

(a) **Failure to Pay Rent or Other Amounts.** If Tenant fails to pay when due, Minimum Rent, Percentage Rent, Additional Rent or any other Rent payable by Tenant under the terms of this Lease, and such failure shall continue for five (5) days after written notice from Landlord to Tenant of such failure; provided, however, that with respect to Minimum Rent, Percentage Rent, and Additional Rent, Tenant shall not be entitled to more than two (2) notices of such failure during any calendar year and if, after two (2) such notices are given in any calendar year, Tenant fails, during such calendar year, to pay any such amounts when due, such failure shall constitute an Event of Default without further notice by Landlord or additional cure period.

(b) **Violation of Lease Terms.** If Tenant breaches or fails to comply with any provision of this Lease applicable to Tenant, and such breach or failure to comply is not covered by the provisions of Subsection (a) above and continues for a period of fifteen (15) days after written notice thereof by Landlord to Tenant, or, if such breach or failure to comply cannot reasonably be cured within such fifteen (15) day period, if Tenant shall not in good faith commence to cure such breach or failure to comply within such fifteen (15) day period or shall not diligently complete such cure within thirty (30) days after such written notice from Landlord; provided, however, that if such breach or failure to comply causes or results in (i) a dangerous condition on the Premises, Building, or Project, (ii) any insurance coverage carried by Landlord or Tenant with respect to the Premises, Building or Project being jeopardized, or (iii) a material disturbance to another tenant of the Building or Project, then an Event of Default shall exist if such breach or failure to comply is not cured as soon as reasonably possible after written notice thereof by Landlord to Tenant (but in no event later than five (5) days after said notice), and Landlord, in addition to but not in lieu of or in limitation of any other right and remedy available to Landlord under this Lease or at law or in equity, shall have the right to seek injunctive relief to restrain or stop Tenant from any such breach or failure to comply. For purposes of this Subsection (b), financial inability shall not be deemed a reasonable ground for failure to immediately cure any breach of, or failure to comply with, the provisions of this Lease.

(c) **Non-occupancy of Premises.** If Tenant shall fail to occupy and use the Premises within fifteen (15) days after commencement of the Term or shall leave the Premises unoccupied for fifteen (15) consecutive days or shall vacate and abandon the Premises.

(d) **Transfer of Interest Without Consent.** If Tenant's interest under this Lease or in the Premises shall be transferred to or pass to or devolve upon any other party in violation of the provisions of Section 16 hereof.

(e) **Execution and Attachment Against Tenant.** If Tenant's interest under this Lease or in the Premises shall be taken upon execution or by other process of law directed against Tenant, or shall be subject to any attachment at the instance of any creditor or claimant against Tenant and such attachment shall not be discharged or disposed of within fifteen (15) days after the levy thereof.

(f) **Bankruptcy or Related Proceedings.** If Tenant shall file a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any similar act of any state, or shall voluntarily take advantage of any such law or act by answer or otherwise, or shall be dissolved, or shall make an assignment for the benefit of creditors, or if involuntary proceedings under any such bankruptcy or insolvency law or for the dissolution of Tenant shall be instituted against Tenant, or if a receiver or trustee shall be appointed for the Premises or for all or substantially all of the property of Tenant, and such proceedings shall not be dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment.

**25.2 Landlord's Remedies.** Upon the occurrence of any Event of Default, Landlord shall have the right, at Landlord's election, then or at any time thereafter, to exercise any one or more of the following remedies:

(a) **Cure by Landlord.** Upon an Event of Default, Landlord may, at Landlord's option, but without obligation to do so, and without releasing Tenant from any obligations under this Lease, make any payment or take any action as Landlord may deem necessary or desirable. Landlord may do so without demand on, or written notice to, Tenant and without giving Tenant an opportunity to cure such Event of Default. Tenant covenants and agrees to pay to Landlord, within ten (10) days after demand, all advances, costs and expenses of Landlord in connection with the making of any such payment or the taking of any such action, including reasonable attorney's fees, together with interest at the rate set forth in Section 31.9, from the date of payment of any such advances, costs and expenses by Landlord.

(b) **Termination of Lease and Damages.** Upon an Event of Default, Landlord may terminate this Lease, effective at such time as may be specified by written notice to Tenant, and demand (and, if such demand is refused, recover) possession of the Premises from Tenant and remove all property therefrom, which may be stored by Landlord at the sole risk, expense and for the account of Tenant. Tenant shall remain liable to Landlord for all amounts owing as of the date of such Termination, plus damages in an amount equal to the Minimum Rent, Percentage Rent, Additional Rent and other Rent which would have been owing by Tenant hereunder for the balance of the Term, had this Lease not been terminated, less the net proceeds, if any, of any reletting of the Premises by Landlord subsequent to such termination, after deducting all Landlord's expenses in connection with such recovery of possession or reletting. All past due amounts shall be immediately due and payable to Landlord. Landlord shall be entitled to collect and receive damages for Rent owing for the balance of the Term from Tenant on the days on which Minimum Rent, Percentage Rent and any other amounts would have been payable if this Lease had not been terminated. Alternatively, at the option of Landlord, Landlord shall be entitled to recover such damages forthwith from Tenant, as damages for loss of the bargain and not as a penalty, in an aggregate sum which, at the time of such termination of this Lease, represents the present value of the amount, if any, by which (a) the aggregate of Minimum Rent, Percentage Rent, Additional Rent and any other Rent payable by Tenant hereunder that would have accrued for the balance of the Term exceeds (b) the amount, if any, of such Minimum Rent, Percentage Rent, Additional Rent and any other Rent which Tenant establishes Landlord can reasonably expect to recover by reletting the Premises for the remainder of the Term (taking into consideration loss of rent while finding a new tenant, tenant improvements and rent abatements necessary to secure a new tenant, leasing brokers'

commissions and other costs which Landlord might incur in leasing the Premises to a new tenant), plus any other sum of money and damages owed by Tenant to Landlord for events or actions occurring prior to the date of termination. Tenant shall reimburse Landlord upon demand for all costs and expenses, including attorneys' fees which Landlord may incur in enforcing this provision.

(c) **Repossession and Reletting.** Upon an Event of Default, Landlord may reenter and take possession of the Premises or any part thereof, without demand or notice, and repossess the same and expel Tenant and any party claiming by, through or under Tenant, and remove the effects of both, with or without process of law, and using such force for such purposes as may be necessary, without being liable for prosecution on account thereof or being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of rent or right to bring any proceeding for breach of covenants or conditions. No such reentry or taking possession of the Premises by Landlord shall be construed as an election by Landlord to terminate this Lease unless a written notice of such intention is given to Tenant. No notice from Landlord hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by Landlord to terminate this Lease unless such notice specifically so states. Landlord reserves the right, following any reentry or reletting, to exercise its right to terminate this Lease by giving Tenant such written notice, in which event this Lease will terminate as specified in such notice. After recovering possession of the Premises, Landlord may, from time to time, but shall not be obligated to, relet the Premises, or any part thereof or take such other action to eliminate the Event of Default, for the account of Tenant, for such term or terms and on such conditions and upon such other terms as Landlord, in its discretion, may determine. Landlord may take such action or may make such repairs, alterations or improvements as Landlord may consider appropriate to accomplish such necessary action or reletting, and Tenant shall reimburse Landlord upon demand for all costs and expenses, including attorneys' fees, which Landlord may incur in connection with the same. Landlord may collect and receive the rents for such reletting but Landlord shall in no way be responsible or liable for any failure to relet the Premises, or any part thereof, or for any failure to collect any rent due upon such reletting. Notwithstanding Landlord's recovery of possession of the Premises, Tenant shall continue to pay on the dates herein specified, the Minimum Rent, Percentage Rent, Additional Rent and any other Rent which would be payable hereunder if such repossession had not occurred, less a credit for the net amounts, if any, actually received by Landlord through any reletting of the Premises.

(d) **Landlord's Bankruptcy Remedies.** Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding, an amount equal to the maximum allowable by any statute or rule of law governing such proceeding in effect at the time when such damages are to be proved, whether or not such amount is greater than, equal to, or less than the amounts recoverable, either as damages or rent, under this Lease.

**25.3 Remedies Cumulative.** Exercise of any of the remedies of Landlord under this Lease shall not prevent the concurrent or subsequent exercise of any other remedy provided for in this Lease or otherwise available to Landlord at law or in equity.

## **26. DEFAULT BY LANDLORD.**

**26.1 Notice and Cure.** Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord specifying the manner in which Landlord has failed to perform such obligations; provided, however, that if the nature of Landlord's obligations is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In no event shall Tenant have the right to terminate this Lease, or have any right to offset against, or any abatement of, any monies owing by Tenant hereunder, as a result of Landlord's default, and Tenant's remedies shall be limited to damages and/or an injunction.

**26.2 Limitation on Recovery.** In no event shall Landlord at any time be liable to Tenant for any damages, costs, or expenses in excess of Landlord's interest in the Premises. All judgments against Landlord shall be *in rem* against the Premises and enforced only against such interest and not against any other present or future asset of Landlord. In no event shall Tenant make any claim against or seek to impose any personal liability upon Landlord, any general or limited partner of Landlord, or any principal of any firm or corporation that may hereafter become the Landlord, or any agent, employee, representative, officer, director, partner, member, manager or affiliate of any of them. Tenant hereby waives any rights Tenant may now or hereafter have of recourse against any such person or against any present or future asset of such person.

## **27. DAMAGE AND DESTRUCTION.**

If the Premises or the Building are damaged in whole or part by fire or other insured casualty, Landlord will give Tenant notice of the time which will be needed to repair such damage, as determined by Landlord in its sole discretion, and the election (if any) which Landlord has made according to this Section 27. Such notice will be given no later than the forty-fifth (45<sup>th</sup>) day (the "Notice Date") after the fire or other insured casualty.

(a) If the Premises or the Building are damaged in whole or part by fire or other insured casualty to an extent which may be repaired within ninety (90) days after the commencement of repair, as determined by Landlord, Landlord will repair the damage. In that event this Lease will continue in full force and effect except that Minimum Rent will be abated on a pro rata basis from the date of the fire or other insured casualty until the date of the substantial completion of such repairs (the "Repair Period") in proportion to the rentable square footage of the Premises which Tenant is unable to use during the Repair Period. Notwithstanding the foregoing, Landlord shall not be obligated to repair any damage which occurs within the last twenty-four (24) months of the Term, and if Landlord so elects not to repair, this Lease shall terminate on the Notice Date.

(b) If the Premises or the Building are damaged in whole or part by fire or other insured casualty to an extent which may not be repaired within ninety (90) days after the commencement of repair but which may be repaired within one hundred eighty (180) days after the commencement of repair, as determined by Landlord, then, at Landlord's option,

Landlord will repair such damage to the Building or Premises. If Landlord elects to repair such damage, Minimum Rent will be abated during the Repair Period in proportion to the rentable square footage of the Premises which Tenant is unable to use during the Repair Period. If Landlord does not elect to repair such damage, this Lease will terminate on the Notice Date.

(c) If the Premises or the Building are damaged in whole or part by fire or other insured casualty to an extent which cannot be repaired within one hundred eighty (180) days after the commencement of repair, as determined by Landlord, then (i) Landlord may cancel this Lease as of the date of such damage by written notice given to Tenant on or before the Notice Date or (ii) Tenant may cancel this Lease as of the date of such damage by written notice given to Landlord within ten (10) days after Landlord's delivery of a notice that the repairs cannot be made within such one hundred eighty 180 days. If neither Landlord nor Tenant so elects to cancel this Lease, Landlord will repair the Building and Premises, and Minimum Rent will be abated during the Repair Period in proportion to the rentable square footage of the Premises which Tenant is unable to use during the Repair Period.

Notwithstanding the provisions of subsections (a), (b) or (c) above, (i) if the proceeds of insurance are insufficient to pay for the repair of any damage to the Premises or the Building, Landlord will have the option to repair such damage or cancel this Lease as of the date of such casualty by written notice to Tenant on or before the Notice Date; and (ii) if any such damage by fire or other casualty is the result of the willful conduct, negligence or failure to act of Tenant, its officers, servants, employees, contractors, jobbers, agents, licensees, invitees, guests and visitors, there will be no abatement of Minimum Rent as otherwise provided for in this Section 27, and Tenant shall not have any right to terminate this Lease pursuant to subparagraph (c) above.

Landlord shall be deemed to have complied with the requirements of this Section 27 as to the time of completion of repairs so long as Landlord makes diligent effort to complete the repairs in a reasonable amount of time.

## **28. CONDEMNATION.**

If all or substantially all of the Building or the Premises is taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or is sold to the condemning authority in lieu of condemnation, then this Lease will terminate as of the date when physical possession of the Building or the Premises is taken by the condemning authority. If less than the whole or substantially the whole of the Building or the Premises is thus taken by or sold to a condemning authority, and if, after such partial taking or sale (whether or not the Premises are affected thereby), in Landlord's reasonable judgment, alteration or reconstruction of the Building is not economically justified, Landlord may terminate this Lease by giving written notice to Tenant within sixty (60) days after such taking. If over fifty (50%) percent of the Premises is thus taken by or sold to a condemning authority, Tenant may terminate this Lease if, in Tenant's reasonable judgment, the Premises cannot be operated by Tenant in an economically viable fashion because of such partial taking. Such termination option of Tenant must be exercised by written notice to Landlord given not later than sixty (60) days after Tenant is notified of the taking by or sale to a condemning authority of the Premises. Termination by Landlord or Tenant shall be effective as of the date when physical possession of the affected portion of the Building or the Premises is taken by the condemning authority. If

neither Landlord nor Tenant elects to terminate this Lease upon a partial taking by or sale to a condemning authority of the Premises, the Minimum Rent payable under this Lease will be reduced in proportion to the portion of the Premises which was so taken or sold, and Landlord will, at Landlord's expense, promptly restore and reconstruct the Building and the Premises to substantially their former condition to the extent that the same may be feasible. In no event shall Landlord be required to spend any amount for such restoration or reconstruction in excess of the net amount received by Landlord as compensation or damages for the part of the Building or Premises so taken. In the event of any taking by or sale to a condemning authority whatsoever, Landlord alone shall be entitled to conduct all negotiations regarding any compensation to be paid in connection therewith and to receive any and all awards and/or settlements which may be given (including any award for the value of any unexpired term of this Lease), and Tenant shall have no claim and hereby waives any claim for the value of any unexpired Term of this Lease.

## **29. SUBSTITUTED PREMISES**

Landlord reserves the right on thirty (30) days written notice to Tenant to substitute other premises (of equal or greater square footage and similar configuration to the Premises) within the Building or Project for the Premises for all uses and purposes as though originally leased to Tenant by this Lease. Landlord shall pay all reasonable moving expenses of Tenant incidental to such substitution of premises. If this right is exercised, Landlord shall, at its own expense, provide Tenant with paint, wall coverings and carpeting at the substituted premises comparable to that in the original Premises. Landlord shall have the right to move the Tenant to temporary premises in the Building, for a period not to exceed sixty (60) days, while the substituted premises are being made ready for Tenant.

## **30. TRANSFERS OF LANDLORD'S INTEREST.**

**30.1 Sale, Conveyance and Assignment.** Subject only to Tenant's rights under this Lease, nothing in this Lease will restrict Landlord's right to sell, convey, assign or otherwise deal with the Building, Project, or Landlord's interest under this Lease.

**30.2 Effect of Sale, Conveyance or Assignment.** A sale, conveyance or assignment of the Building will automatically release Landlord from liability under this Lease from and after the effective date of the transfer, except for any liability relating to the period prior to such effective date; Tenant will look solely to Landlord's transferee for performance of Landlord's obligations relating to the period after such effective date. This Lease will not be effected by any such sale, conveyance or assignment, and Tenant will attorn to Landlord's transferee.

**30.3 Subordination and Nondisturbance.** This Lease is and will be subject and subordinate in all respects to any ground lease, mortgage or deed of trust now or later encumbering the Building or Project, and to all their renewals, modifications, supplements, consolidations and replacements (an "Encumbrance"); provided that, with respect to any Encumbrance encumbering the Building or Land for the first time subsequent to the date of execution of this Lease, Landlord shall use reasonable efforts to ensure that the holder of such Encumbrance agrees (either in the Encumbrance or in a separate agreement with Tenant) that so long as Tenant is not in default of its obligations under this Lease, this Lease will not be

terminated and Tenant's possession of the Premises will not be disturbed by the termination, foreclosure, or proceedings for enforcement of such Encumbrance. As used herein this paragraph, the term "reasonable efforts" shall not mean the expending of any financial sums by Landlord. While such subordination will occur automatically, Tenant agrees upon request by and without cost to Landlord or any successor-in-interest, to promptly execute and deliver to Landlord or the holder of an Encumbrance such instrument(s) as may be reasonably required to evidence such subordination. Tenant hereby appoints Landlord as its true and lawful attorney-in-fact for purposes of executing any instruments reasonably required to evidence such subordination, and Landlord shall be entitled to execute such instruments upon Tenant's failure to do so. In the alternative, however, the holder of an Encumbrance may unilaterally elect to subordinate such Encumbrance to this Lease.

**30.4 Attornment.** If the interest of Landlord is transferred to any person (a "Transferee") by reason of the termination, foreclosure, or proceedings for enforcement, of an Encumbrance, or by delivery of a deed-in-lieu of such foreclosure or proceedings, Tenant will immediately and automatically attorn to the Transferee. Upon attornment this Lease will continue in full force and effect as a direct lease between the Transferee and Tenant, upon all of the same terms, conditions and covenants as stated in this Lease. Tenant agrees, upon request by and without cost to the Transferee, to promptly execute and deliver to the Transferee such instrument(s) as may be reasonably required to evidence such attornment. Tenant hereby appoints Landlord as its true and lawful attorney-in-fact for purposes of executing any instruments reasonably required to evidence such attornment, and Landlord shall be entitled to execute such instruments upon Tenant's failure to do so.

## **31. GENERAL PROVISIONS.**

**31.1 Plats and Riders.** Clauses, plats, riders, addenda, and exhibits, if any, affixed to this Lease are a part hereof.

**31.2 Waiver.** The waiver by Landlord of any term, covenant or condition herein contained shall not be effective unless in writing and signed by Landlord, and any such waiver shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent by Landlord shall not be deemed to be a waiver of any preceding default by Tenant of any term, covenant or condition of this Lease, other than the failure of the Tenant to pay the particular Rent so accepted (and without prejudice to Landlord's right to collect late charges or any other Rent due by reason of the late payment or otherwise), regardless of Landlord's knowledge of such preceding default at the time of the acceptance of such Rent.

**31.3 Joint Obligation.** If there be more than one Tenant, the obligations hereunder imposed shall be joint and several.

**31.4 Headings.** Article and Section titles of this Lease are not a part of the Lease and shall have no effect upon the construction or interpretation of any part hereof.

**31.5 Time.** Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.



**31.6 Binding Effect.** Subject to the provisions of Section 16, the covenants and conditions herein contained shall inure to the benefit of and bind the heirs, successors, executors, administrators and permitted assigns of the parties hereto.

**31.7 Recordation.** Tenant shall not record this Lease, but Tenant agrees to execute a short form memorandum for recording hereof at Landlord's request.

**31.8 Quiet Enjoyment..** Upon Tenant paying the Rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall peaceably and quietly hold and enjoy the Premises for the entire Term hereof, without hindrance or interruption by Landlord or any other persons claiming by, through, or under Landlord subject to all the provisions of this Lease and any mortgage to which this Lease is subordinate.

**31.9 Late Charges, Interest.** Tenant hereby acknowledges that late payment by Tenant to Landlord of Minimum Rent, Percentage Rent, Additional Rent, or any other Rent due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by the terms of any mortgage or trust deed covering the Building. Accordingly, if any installment of Minimum Rent, Percentage Rent, Additional Rent, or any other sum due from Tenant is not received by Landlord or Landlord's designee within ten (10) days after such amount is due, then, without any notice to Tenant thereof, Tenant shall pay to Landlord a late charge equal to ten (10%) percent of the overdue amount plus any attorney's fees, court costs, and other expenses of collection or litigation incurred by Landlord by reason of Tenant's failure to pay such amount. The parties hereby agree that such late charges represent a fair and reasonable estimate of the costs that Landlord will incur by reason of the late payment by Tenant. Acceptance of such late charges by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. In addition, any Minimum Rent, Percentage Rent or other amounts not paid when due hereunder shall bear interest from the date due until paid at the lesser of the Prime Rate plus 5% per annum or the maximum lawful rate of interest.

**31.10 Prior Agreements.** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior or contemporaneous agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or supplemented except by an agreement in writing signed by the parties hereto. This Lease shall not be effective or binding on any party until fully executed by both parties hereto.

**31.11 Inability to Perform; Covenants Independent.** This Lease and the obligations of Tenant hereunder shall not be affected or impaired because Landlord is unable to fulfill any of its obligations hereunder or is delayed in doing so. It is the intent of the parties that this Lease be construed as if the covenants contained herein between Landlord and Tenant are independent and not dependent and that Rent shall be payable without offset, reduction or abatement for any cause except as otherwise specifically provided in this Lease. In the event that Landlord shall be liable to Tenant for any sums or other matters, either arising out of this Lease

or otherwise, Tenant shall not have the right to offset or deduct such liability of Landlord to Tenant against or from the Rent due to Landlord pursuant to the terms of this Lease.

**31.12 Partial Invalidity.** Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain in full force and effect.

**31.13 Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

**31.14 Choice of Law.** This Lease shall be governed by and construed in accordance with the laws of the State where the Project is located.

**31.15 Attorneys' Fees.** In the event any action or proceeding is brought by either party against the other under this Lease, the prevailing party, whether by judgment or out of court settlement, shall recover its court costs, litigation expenses generally recognized in the jurisdiction, expert fees and reasonable attorneys' fees in such action or proceeding, including costs of appeal, if any, plus court costs and other expenses of litigation. In addition, should it be necessary for Landlord to employ legal counsel to enforce any of Tenant's obligations under this Lease, Tenant agrees to pay all attorneys' fees, court costs, and other expenses of collection or litigation reasonably incurred by Landlord.

**31.16 Notices.** All notices, demands, approvals and consents which are required or permitted to be given by either party to the other hereunder shall be in writing. Any and all such items shall be addressed to Tenant at Tenant's Address or to Landlord at Landlord's Address, as the case may be, and shall be deemed to have been duly delivered: (i) upon personal or telecopy transmission delivery; (ii) as of the third (3<sup>rd</sup>) business day after mailing by United States mail, certified, return receipt requested, postage prepaid; or (iii) as of the immediately following business day after deposit with Federal Express or a similar overnight courier service, with delivery charges for morning delivery on the next business day prepaid. Either party may change its address for notices by written notice to the other party in accordance with this Section 31.16.

**31.17 Tenant Statement.** Tenant shall at any time and from time to time, upon not more than 5 days' written notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying (a) that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect), (b) the date to which any Rent is paid in advance, if any, (c) that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord or Tenant hereunder, or specifying such defaults if any are claimed, (d) the date of commencement of Minimum Rent payments and the Termination Date, and (e) as to any other matters as Landlord may reasonably request. Tenant hereby appoints Landlord as its true and lawful attorney-in-fact for purposes of executing such a statement, and Landlord is hereby authorized to execute such a statement upon Tenant's failure to do so. Any such statement may be relied upon by the prospective purchaser or encumbrancer of all or any portion of the Building of which the Premises are a part.

**31.18 Authority to Sign Lease.** The individual executing this Lease on behalf of Tenant represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of Tenant, in accordance with the bylaws and other corporate documents, partnership agreement, trust agreement or other governing instruments or documents of Tenant, and further represents and warrants that this Lease is binding on Tenant in accordance with its terms. The individual executing this Lease on behalf of Landlord represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of Landlord, in accordance with the bylaws and other corporate documents, partnership agreement, trust agreement or other governing instruments or documents of Landlord, and further represents and warrants that this Lease is binding on Landlord in accordance with its terms.

**31.19 Brokers.** Tenant warrants that it has had no dealings with any real estate broker or agents in connection with the negotiation of this Lease excepting Landlord's Broker and Tenant's Broker, and it knows of no other real estate broker or agent who is entitled to a commission in connection with this Lease. In the event any claim is made for brokerage commissions by any person or entity other than Landlord's Broker or Tenant's Broker, as the result of acts or action of Tenant (or if claimed through Tenant), Tenant, its heirs, successors, and assigns, hereby agree to indemnify, defend and hold Landlord harmless from and against any and all damages and liabilities, including without limitation court costs, attorneys' fees, and other expenses of litigation incurred by Landlord in connection with any such claim. The foregoing agreement and warranty shall inure to the benefit of Landlord, its successors, and assigns, and Tenant agrees to give testimony to this effect in case any action or proceeding is instituted by any real estate broker, licensed or otherwise, in connection with this transaction.

**31.20 Name.** Landlord shall have the right to change the name of the Building or Project from time to time and shall have no liability to Tenant as a result thereof.

**31.21 Continuing Liability.** No termination or expiration of this Lease shall relieve Tenant of any obligation to pay or reimburse sums to Landlord or to indemnify or hold Landlord harmless from any damage or liability, where such obligation accrues or arises prior to such termination or expiration of this Lease, and Tenant shall be required to perform such obligations notwithstanding such termination or expiration. Tenant's duty to pay sums to Landlord is independent from all other obligations.

**31.22 No Merger.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation hereof, shall not work a merger of this Lease, unless Landlord otherwise elects. If Landlord elects the surrender or cancellation of this Lease, Landlord shall either terminate any or all existing subleases or concessions, or operate as an assignment thereof to Landlord, whichever Landlord shall elect.

**31.23 Counterparts.** This Lease may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

**31.24 Confidentiality.** Tenant shall keep the terms of this Lease shall remain strictly confidential. Tenant agrees to keep such terms, covenants, obligations and conditions strictly confidential, and not to disclose such matters to any other landlord, tenant, prospective

tenant, or broker; provided, however, Tenant may provide a copy of this Lease to its attorneys, accountants, or to any governmental entity, agency or person to whom disclosure is required by any applicable laws.

**31.25 No Construction Against Drafting Party.** Landlord and Tenant acknowledge that each of them and their counsel have had an opportunity to review this Lease and that this Lease will not be construed against Landlord merely because Landlord's counsel has prepared it.

**31.26 Accord and Satisfaction.** Payment by Tenant or receipt by Landlord of a lesser amount than the Rent or other charges herein stipulated shall be deemed to be on account of the earlier due stipulated Rent or other charges, and no endorsement or statement on any payment or any letter accompanying any payment as Rent or other charges shall be deemed an accord and satisfaction, and Landlord shall accept such payment without prejudice to Landlord's right to recover the balance of such Rent or other charges or pursue any other remedy in this Lease against Tenant.

**31.27 Waiver of Jury Trial/Notices.** TENANT AND LANDLORD HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS LEASE OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF TENANT OR LANDLORD. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LANDLORD'S ENTERING INTO THIS LEASE.

**31.28 Time is of the Essence.** Time is of the essence for all provisions of this Lease.

**31.29 Interest/Late Charge.** In the event that any interest rate or late charge would violate any usury law or similar law, the rate or charge so called for shall be lowered to the maximum amount allowed by law.

## **32. OPTION TO EXTEND.**

**32.1** Tenant shall have an option to extend the Lease for one (1) additional consecutive term ("Renewal Term") consisting of five (5) years (the "Renewal Option"). In order to exercise such Renewal Option, Tenant shall notify Landlord in writing at least sixty (60) days prior to the expiration of the respective lease term of its election to exercise the Renewal Option. If Tenant fails to give timely notice, as aforesaid, the Renewal Option shall be deemed waived and of no further force and effect and this Lease shall terminate upon the termination of the initial Term.

**32.2** Tenant's right to extend this Lease as provided for herein can be exercised only if, at the time of Tenant's exercise of the Renewal Option and upon the commencement of the Renewal Term, (a) no Event of Default then exists under this lease, and (b) Tenant is in possession of the entire Premises. If either of such conditions are not satisfied, the Renewal Option shall be terminated and of no further force and effect, any purported exercise thereof shall

be null and void, and this Lease shall terminate upon the expiration of the initial term of this Lease. No assignee of Tenant or Sublessee of the Premises may exercise the Renewal Option.

**32.3** If Tenant exercises the Renewal Option in accordance with and subject to the provisions of this Section 32, all of the terms, covenants and conditions provided in this Lease shall continue to apply during the Renewal Term, except that (i) the Minimum Rent during the Renewal Term shall be as set forth in Section 32.4 and (ii) any terms, covenants and conditions that are expressly or by their nature inapplicable to the Renewal Term (including, without limitations, this Section 32 shall be deemed void and of no further force and effect.

**32.4** Commencing on the Renewal Term, Tenant shall pay Minimum Rent as follows:

Months	Monthly Rent
1 – 60	\$625.00

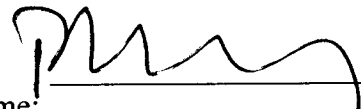
All notification contemplated herein, whether from Tenant to Landlord, or from Landlord to Tenant, shall be in writing and shall be given in the manner provided in Section 31.16. Failure of Tenant to give notice in accordance herewith, time being of the essence, shall render this option null and void.

[Signature page follows]

**IN WITNESS WHEREOF**, the undersigned have executed this Lease as of the day and year first above written.

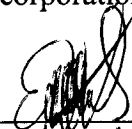
**LANDLORD:**

AIMCO MICHIGAN MEADOWS  
HOLDINGS, L.L.C.,  
a Delaware limited liability company

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

MDV, INC.,  
an Indiana corporation

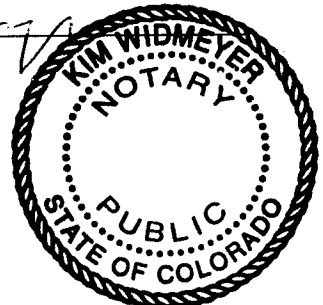
By:   
Name: Edelmira Valencia  
Title: President

STATE OF Colorado )  
 )  
COUNTY OF Denver ) ss.

Subscribed and sworn to before me by Peter Kouponis  
\_\_\_\_\_.

My commission expires: 09/30/2008

K. Widmeyer  
Notary



My Commission Expires 9/30/2008

STATE OF Indiana )  
 )  
COUNTY OF Marion ) ss.

Subscribed and sworn to before me by Edelmira Valencia  
\_\_\_\_\_.

My commission expires: May 8, 2007

Nicole M. Roby  
Notary

## **EXHIBIT A**

### **Rule and Regulations**

1. Tenant, by execution of this Lease and occupancy of the Premises, agrees to comply with any encumbrances, covenants, restrictions and conditions in effect ("Covenants"), as heretofore and hereafter amended, as applicable to Tenant's use and enjoyment of the Premises and the Project. Landlord's reasonable judgment shall be conclusive in enforcing these rules and regulations. In addition to all rights available to Landlord hereunder, in the event Landlord is required to pay to any association any fines, assessments, charges or other amounts on account of any act or omission of Tenant (or any of its respective employees, officers, servants, contractors, jobbers, licensees, invitees, guests, visitors, agents or independent contractors), Tenant shall, upon demand, reimburse Landlord for such amounts, together with interest thereon at the rate of twelve percent (12%) per annum.

2. Tenant shall not obstruct or interfere with the rights of other tenants of the Project or of persons having business in or occupying any portion of the Project or in any way injure or annoy such tenants or persons.

3. Tenant shall not commit any act or permit anything in or about the Project which would subject Landlord to any liability or responsibility for injury to any person or property by reason of any business or operation being carried on, in or about the Project or for any other reason, subject to the terms of this Lease.

4. Tenant shall not use the Building for lodging, sleeping, cooking, or for any immoral or illegal purposes or for any purpose that will damage the Project, or the reputation thereof, or for any purposes other than those specified in the Lease in Landlord's reasonable judgment.

5. Canvassing, soliciting, and peddling in the Project are prohibited, and Tenant shall cooperate to prevent such activities.

6. Tenant shall not bring or keep within the Building any animal, bicycle, or motorcycle.

7. Tenant shall not commercially cook or prepare food, or place or use any inflammable, combustible, explosive or hazardous fluid, chemical, device, substance or material in or about the Building without the prior written consent of Landlord, which may be withheld in landlord's sole and absolute discretion, over and above its initial use and leased purpose of the Premises. Tenant shall comply with the statutes, ordinances, rules, orders, regulations and requirements imposed by governmental or quasi-governmental authorities in connection with fire and panic safety and fire prevention and shall not commit any act or permit any object to be brought or kept in the Project, which shall result in a change of rating of any portion of the Project by risk management or similar person or entity subject to the terms of this Lease. Tenant shall not commit any act or permit any object to be brought or kept in the Building which shall increase the rate of fire insurance on the Building or on property located therein, subject to the terms of this Lease. In the event that Tenant's use, as allowed by the Landlord, increases the rate



of fire insurance, then Tenant shall, if Landlord permits such use, pay to Landlord upon demand, as Additional Rent, an amount equal to the increase in the rate.

8. Tenant shall not occupy the Building or permit any portion of the Project to be occupied for the manufacture or direct sale of liquor, narcotics, or tobacco in any form. Tenant shall not conduct in or about the Project any auction, public or private without the prior written approval of Landlord.

9. Tenant shall not install or use in the Project any air conditioning unit, engine, boiler, generator, machinery, heating unit, stove, water cooler, ventilator, radiator or any other similar apparatus without the express prior written consent of Landlord, and then only as Landlord may reasonably direct.

10. All office equipment and any other device of any electrical or mechanical nature shall be placed by Tenant in the Premises in settings reasonably approved by Landlord, so as to absorb or prevent any vibration, noise, or annoyance. Tenant shall not cause improper noises, vibrations, or odors within the Project.

11. Tenant shall move all freight, supplies, furniture, fixtures, and other personal property into, within and out of the Building only through such entrances and at such times as may be reasonably designated by Landlord, and such movement of such items shall be under the reasonable supervision of Landlord. Landlord reserves the right to periodically inspect all such freight, supplies, furniture, fixtures and other personal property, to be brought into the Building and to exclude from the Project all such objects which violate any of these rules and regulations or the provisions of the Lease. Tenant shall not move or install such objects in or about the Project in such a fashion as to unreasonably obstruct the activities of the other tenants, and all such moving shall be at the sole expense, risk, and responsibility of Tenant.

12. Tenant shall not place within the Building any objects which exceed the floor weight specifications of the Building without the express prior written consent of Landlord. The placement and positioning of all such objects within the Building shall be reasonably prescribed by Landlord and such objects shall, in all cases, be placed upon plates or footings of such size as shall be reasonably prescribed by Landlord.

13. Tenant shall not deposit any trash, refuse, cigarettes, or other substances of any kind within or out of the Building except in refuse containers provided therefor. Tenant shall exercise its best efforts to keep the sidewalks, entrances, passages, courts, lobby areas, parking areas, vestibules, public corridors and halls in and about the Building (hereinafter "Common Areas") clean and free from rubbish.

14. Tenant shall use the Common Area only as a means of ingress and egress and other designed purposes, and Tenant shall permit no loitering by Tenant's employees officers, servants, contractors, jobbers, licensees, invitees, guests, visitors, agents or independent contractors, upon Common Areas or elsewhere within the Project. The Common Areas and roof of the Building are not for the use of the general public, and Landlord shall in all cases retain the right to control or prevent access thereto by all persons whose presence in the reasonable judgment of Landlord, shall be prejudicial to the safety, character, reputation or interests of the

Project and its tenants. Tenant shall not go upon the roof of the Building without the express prior written consent of Landlord.

15. Landlord reserves the right to exclude or expel from the Project any person who, in the reasonable judgment of Landlord, is intoxicated or under the influence of liquor or drugs or who shall in any manner act in violation of the rules and regulations of the Project.

16. Subject to the terms of this Lease, Landlord shall have the right to reasonably designate the area or areas, if any, in which Tenant (or any of its respective employees, officers, servants, contractors, jobbers, licensees, invitees, guests, visitors, agents or independent contractors) licenses may park vehicles, and Tenant (or any of its respective employees, officers, servants, contractors, jobbers, licensees, invitees, guests, visitors, agents or independent contractors) shall observe and comply with all driving and parking signs and markers within and about the Project. All parking ramps and areas and any pedestrian walkways, plazas or other public areas forming and part of the Building or the land upon which the Project is situated shall be under the reasonable control of Landlord, who shall have the right to reasonably regulate and control those areas.

17. Tenant shall not use the washrooms, restrooms and plumbing fixtures of the Project, and appurtenances thereto, for any other purpose than the purposes for which they were constructed, and Tenant shall not deposit any sweepings, rubbish, rags or other improper substances therein. Tenant shall not waste water by interfering or tampering with the faucets or otherwise. If Tenant (or any of its respective employees, officers, servants, contractors, jobbers, licensees, invitees, guests, visitors, agents or independent contractors) cause any damage to such washrooms, restrooms, plumbing fixtures or appurtenances, such damage shall be repaired at Tenant's reasonable expense within fifteen (15) days of receipt of written notification from Landlord during which period Tenant may repair same, and Landlord shall not be responsible therefor.

18. Except as set forth in the Lease, Tenant (or any of its respective employees, officers, servants, contractors, jobbers, licensees, invitees, guests, visitors, agents or independent contractors) shall not mark, paint, drill into, cut, string wires within, or in any way deface any part of the Project, without the express prior written consent of Landlord where permitted by Landlord. Upon removal of any wall decorations or installations or floor coverings by Tenant, any damage to the walls or floors shall be repaired by Tenant at Tenant's sole cost and expense. Without limitation upon any of the provisions of the Lease, Tenant shall refer all contractors representatives, installation technicians, and other mechanics, artisans and laborers rendering any service in connection with the repair, or permanent improvements of the Premises to Landlord for Landlord's approval before performance of any such service. This Paragraph 18 shall apply to all work performed in the Building, including without limitation installation of telephones, telegraph equipment, electrical devices and attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings, equipment or any other portion of the Project. Subject to the terms of the Lease, plans and specifications for such work, prepared at Tenant's sole expense, shall be submitted to Landlord and shall be subject to Landlord's express prior written approval in each instance before the commencement of work. All installations, alterations and additions shall be constructed by Tenant in a good and workmanlike manner and in accordance with any applicable code and only good grades of material shall be used in

connection therewith. The means by which telephone, telegraph and similar wires are to be introduced to the Premises and the location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the express prior written approval of Landlord.

19. No signs, awning, showcases, advertising devices or other projections or obstructions shall be attached to the outside walls of the Building or attached or placed upon any Common Areas without the express prior written consent of Landlord. No blinds, drapes or other window coverings shall be installed in the Building without the express prior written consent of Landlord. No sign, picture, advertisement, window display or other public display or notice shall be inscribed, exhibited, painted or affixed by Tenant upon or within any part of the Premises in such a fashion as to be seen from the outside of the Premises or the Building without the express prior written consent of Landlord. In the event of the violation of any of the foregoing by Tenant, Landlord may within fifteen (15) days of written notice to Tenant during which period Tenant may repair same, remove the articles constituting the violation without any liability unless a loss other than said removal, arises from Landlord's willful or negligent acts or omissions, and Tenant shall reimburse Landlord for the reasonable expenses incurred in such removal upon demand and upon submission of applicable bills as additional rent under the Lease. Interior signs on doors and upon the Building directory shall be subject to the express prior written approval of Landlord and shall be inscribed, painted, or affixed by Landlord at the reasonable expense of Tenant upon submission of applicable bills to Tenant.

20. Tenant shall not use the name of the Building or the name of Landlord in its business name, trademarks, signs, advertisements, descriptive material, letterhead, insignia or any other similar item without Landlord's express prior written consent.

21. The sashes, sash doors, skylights, windows, and doors that reflect or admit light or air into the Common Areas shall not be covered or obstructed by Tenant, through placement of objects upon windowsills or otherwise. Tenant shall cooperate with Landlord in obtaining maximum effectiveness of the cooling system of the Building by closing drapes and other window coverings when the sun's rays fall upon windows of the Premises. Tenant shall not obstruct, alter or in any way impair the efficient operation of Landlord's heating, ventilating, air conditioning, electrical, fire, safety, or lighting systems.

22. Subject to applicable fire or other safety regulations, all doors opening onto Common Areas and all doors upon the perimeter of the Premises shall be kept closed and, during non-business hours, locked, except when in use for ingress or egress. If Tenant uses the Premises after regular business hours or on non-business days, Tenant shall lock any entrance doors to the Building or to the Premises used by Tenant immediately after using such doors.

23. Employees of Landlord shall not receive or carry messages for or to Tenant or any other person, nor contract with nor render free or paid services to Tenant (or any of its respective employees, officers, servants, contractors, jobbers, licensees, invitees, guests, visitors, agents or independent contractors).

24. All keys to the exterior doors of the Premises shall be obtained by Tenant from Landlord, and Tenant shall pay to Landlord a reasonable deposit determined by Landlord from time to time upon written notice to Tenant for such keys. Tenant shall not make duplicate copies

of such keys. Tenant shall not install additional locks or bolts of any kind upon any of the doors or windows of, or within, the Building, nor shall Tenant make any changes in existing locks or the mechanisms thereof. Tenant shall, upon the termination of its tenancy, provide Landlord with the combinations to all combination locks on safes, safe cabinets and vaults and deliver to Landlord all keys to the Building, the Premises and all interior doors, cabinets, and other key-controlled mechanisms therein, whether or not such keys were furnished to Tenant by Landlord. Tenant shall pay to Landlord the reasonable cost of replacing lost keys and locks or of changing the lock or locks opened by such lost key if Landlord shall reasonably deem it necessary to make such a change.

25. Landlord shall not be responsible for, and Tenant hereby indemnifies, defends and holds Landlord harmless from any liability in connection with, the loss, theft, misappropriation or other disappearance of furniture, furnishings, fixtures, machinery, equipment, money, jewelry or other items of personal property from the Premises or other parts of the Building regardless of whether the Premises or Building are locked at the time of such loss unless the loss arises from Landlord's willful or negligent acts or omissions.

26. Except as set forth below, no smoking is permitted by any person, including employees of Tenant, in on or about the Project, including the lobby, the stairwells, parking areas, landscaped areas and Building entrances. Notwithstanding the forgoing, persons (including employees of Tenant) shall be permitted to smoke (a) at designated outdoor areas located on the Premises, if permitted by applicable law; provided, however, smoke or the odor may not migrate to other parts of the Building and (b) at least 100 feet from exterior of the Building, provided that (a) all waste (e.g. cigarette butts) is properly disposed of in proper receptacles and not on the ground and (b) smoking shall be limited to such designated areas.

27. For purposes hereof, the terms "Landlord," "Tenant," "Building," and "Premises" are defined as those terms are defined in the Lease to which these Rules and Regulations are attached. Wherever Tenant is obligated under these Rules and Regulations to do or refrain from doing an act or thing, such obligation shall include the exercise by Tenant of its best efforts to secure compliance with such obligation by Tenant's employees officers, servants, contractors, jobbers, licensees, invitees, guests, visitors, agents or independent contractors. The term "Building" and "Project" shall include the Premises, and any obligations of Tenant hereunder with regard to the Building and Project shall apply with equal force to the Premises and to other parts of the Project.

28. Tenant shall not, nor shall it permit any of its employees, officers, servants, contractors, jobbers, licensees, invitees, guests, visitors, agents or independent contractors to keep or bring onto the Premises or the Project any deadly weapon, including but not limited to firearms of any kind.

## **EXHIBIT B**

### **GUARANTY OF LEASE**

In order to induce the Landlord to execute that certain Lease dated \_\_\_\_\_, 2003, (the "Lease") by and between AIMCO MICHIGAN MEADOWS HOLDINGS, L.L.C., a Delaware limited liability company, as Landlord, and MDV, INC., an Indiana corporation, as Tenant, covering certain space commonly known as Suite 3819 of the building located at 3819 Michigan Street, Indianapolis, IN 46222, the undersigned hereby guarantees the payment and performance of, and agrees to pay and perform as a primary obligor, all liabilities, obligations and duties (including but not limited to, payment of rent) imposed upon Tenant under the terms of the Lease, as if the undersigned had executed the Lease as Tenant thereunder. The undersigned is jointly and severally liable with the Tenant and any other guarantor of the Lease for the obligations of Tenant under the Lease.

The undersigned hereby waives notice of acceptance of this guarantee and all other notices in connection herewith or in connection with the liabilities, obligations and duties guaranteed hereby, including notices of default by Tenant under the Lease, and waives diligence, presentment, and suit on the part of the Landlord in the enforcement of any liability, obligation or duty guaranteed hereby.

The undersigned further agrees that Landlord shall not be first required to enforce against Tenant or any other person, including, without limitation, any other guarantor of the Lease, any liability, obligation, or duty guaranteed hereby before seeking enforcement thereof against the undersigned. Suit may be brought and maintained against the undersigned by Landlord to enforce any liability, obligation or duty guaranteed hereby without joinder of Tenant or any other person, including, without limitation, any other guarantor of the Lease. The liability of the undersigned shall not be affected by any indulgence, compromise, settlement or variation of terms which may be extended to Tenant, any other guarantor of the Lease or any other person by Landlord or agreed upon by Landlord and Tenant, and shall not be affected by any termination of the Lease to the extent that Tenant thereafter continues to be liable thereunder. Landlord and Tenant, without notice to or consent by the undersigned, may at any time or times enter into such modifications, extensions, amendments, or other covenants respecting the Lease as they may deem appropriate and the undersigned shall not be released thereby, but shall continue to be fully liable for the payment and performance of all liabilities, obligations and duties of Tenant under the Lease as so modified, extended or amended.

The liability of the undersigned hereunder shall in no way be affected by (a) the release or discharge of Tenant or any other guarantor of the Lease in any creditors, receivership, bankruptcy, or other proceedings; (b) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of the Federal Bankruptcy Code or other statute or from the decision in any court; (c) the rejection or disaffirmance of the Lease in any such proceedings; (d) the assignment or transfer of the Lease by Tenant; or (e) any disability or other defense of Tenant.

Until all the covenants and conditions in the Lease on Tenant's part to be performed and observed are fully performed and observed, the undersigned: (a) shall have no right of subrogation against Tenant by reason of any payments or acts of performance by the undersigned, in compliance with the obligations of the undersigned hereunder; (b) waives any right to enforce any remedy which the undersigned now or hereafter shall have against Tenant by reason of any one or more payments or acts of performance in compliance with the obligations of the undersigned hereunder; and (c) subordinates any liability or indebtedness of Tenant now or hereafter held by the undersigned to the obligations of Tenant to Landlord under the Lease.

This agreement shall be binding upon the undersigned and the heirs, executors, legal representatives, successors and assigns of the undersigned, and shall inure to the benefit of Landlord and its successors and assigns.

EXECUTED this 31 day of March, 2003.

GUARANTOR:

  
\_\_\_\_\_  
EDELMIRA VALENCIA

GUARANTOR'S ADDRESS:

Edelmira Valencia  
2240 Sandringham  
Indianapolis, IN 46214

IF MARRIED:

SPOUSE OF GUARANTOR:

N/A

By: \_\_\_\_\_

Its: \_\_\_\_\_

SPOUSE'S ADDRESS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_